

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KABALE  
CIVIL APPEAL NO. 22 OF 2010**

**(FROM RUKUNGIRI LAND CIVIL CLAIM NO. 8 OF 2005)**

**MUGYENYI CHRIS:.....:APPELLANT**

**VERSUS**

**KEKIBIINA RESTATU:.....:RESPONDENT**

**BEFORE HON. MR. JUSTICE I.W. KWESIGA**

**JUDGMENT**

This Appeal arises from the decision of His Worship TWAKYIRE SAMUEL, Magistrate Grade One at Rukungiri dated 1<sup>st</sup> June, 2010. This is dispute over a strip of land by two neighbours. KEKIBIINA, the Plaintiff sued Chris Mugenyi, the Defendant alleging that he trespassed over her land, removed boundary survey mark stones, planted a hedge annexing her land and constructed structures thereon without her consent in 2001. The Defence case is that the Plaintiffs deceased husband sold the suit land to the Defendant way back in 1997 before he died.

At the trial the following issues were listed for determination:-

1. Whether the Defendant legally bought the land in dispute?
2. Whether the land belongs to the Plaintiff?
3. Whether the Plaintiff is entitled to damages and if so how much?

The trial Magistrate made findings in favour of the Plaintiff and ordered;

- (a) The Defendant to give vacant possession after removing his illegal

developments.

- (b) No damages proved or awarded.
- (c) That the Plaintiff refunds to the Defendant the consideration (purchase price) of the cancelled sale.

The Defendant/Appellant file an appeal against the above decision listing seven (7) grounds of Appeal. With due respect to the Advocate this Appeal grounds were badly drafted or presented and contain repetitive and argumentative statements that could be reduced to the following paraphrased grounds:-

- (aj) That the learned trial Magistrate erred in Law and fact when he failed to evaluate the evidence on record thus leading to a wrong conclusion.
- (b) That the learned trial Magistrate erred in Law when he gave a contradictory Judgment.
- (c) That the trial Magistrate erred in Law when he visited the Locus in quo in the absence of all the parties and respective Advocates after the closure of the parties cases.

In my view the above would have summarized the grounds of appeal and would have avoided presenting arguments in the memorandum of Appeal. This Appeal has been so badly presented that I find it unnecessary to reproduce the badly stated grounds of Appeal, since it is the duty of this court to subject the trial court's evidence to fresh and independent evaluation, I have decided to do so by addressing the issues that had been stated by the trial court and the decision that this court will arrive at will take care of the substance obscured by the bad memorandum of Appeal. Therefore I will not follow the multiple, defective and unnecessary grounds presented.

The role of an appellate court is to consider the case in controversy as recorded by the Lower Court, and having regard to the grounds of Appeal and the submissions of the parties, to determine if it ought to uphold, modify or reverse the Judgment of the Lower Court and render its Judgment accordingly.

Courts should not dive into the Advocates shoes to draft its own grounds of appeal at the same time grounds of Appeal need not be reproduced verbatim, especially, like in the instant case, where they are unnecessarily wordy and repetitive. The court has the discretion of extract, as I have done above, the essence of the grounds. Some of the several repetitive and wordy grounds can be paraphrased as I have decided to do for purposes of effective and effectual resolution of the real contraversay between the parties.

PW1 (CW 1) the Plaintiff/Respondent is a widow of ALOSIOUS BEINEITIMA who died in July 2001. She obtained Letters of Administrate to her husbands estate in July 2003. She became the registered proprietor of the suit land in September, 2003 by virtue of the Letters of Administration. The copy of the land Title for Kigezi Block 8 Plot 252 shows that her late husband inherited or got transfer of the land from his late father who was first registred owner in 1960. I have observed that the Plaintiffs husband was registered on the title after his death, that is on 28<sup>th</sup> August, 2003. In my view there was nothing fraudulent about it since, as recorded, this was by virtue of Letters of Administration granted under Administration Cause No. 30 of 1996 which is not challenged. My understanding of this exhibit is that it was a necessary step, left incomplete by the deceased Beineitima and the Plaintiff/Respondent completed it to render her registration on the title as his success in title. The Appellants Advocates submitted that the Respondent's title was tainted with illegality as it was registered Post humously on 28<sup>th</sup> August, 2003 when he had died in June, 2001. I find no merit in this argument and ground of appeal. The Respondent acted legally in completing what the deceased left in the process or un done. The argument for the Respondent would hold sense if the deceased did not have the right to have the land registered in his name by virtue of his succession from the Late MATIANS1 NDABUNGA who was first registered in 1960. This, in my view, was a necessary step taken by the Respondent before she could effectively and properly be registered as the next registered

proprietor. What she did was proper in Law and she was legally entitled to be registered as she did and there is no evidence that she did that to defeat unregistered interest of any other party, the Appellant inclusive. This is distinguishable from the cited decision **of MATOVU & ANOTHER VS SSEVIRE AND ANOTHER [1997] HCB 174.** Where registration of the land under RTA disregarded interests of unregistered proprietors and the intention to defeat their interests was proved.

In the instant the claimed/Alleged unregistered interest which are subject of this trial are a claim of purchase of part of the land which was already under operation of Registration of Titles Act. The case of SEVIRI dealt with application to register under the Registration of titles Act without due regard to unregistered interests of people who had right of claim by virtue of their customary tenure. The Appellants reliance on the principles of Law found in the case of **MAYAMBALA VS SENTAMU AND ANOTHER (1987) HCB 68** is misconceived and this ground of appeal ought to fail.

### **LOCUS IN QUO**

*On page 19 of the proceedings the trial Magistrate recorded. "Since the land is registered and the case involves boundaries there is a need to visit Locus before Judgment date is fixed on 17<sup>th</sup> August, 2009 due to court vocation to get a surveyor."* The Proceedings ended on the next page and there is no record or evidence that the locus in quo was visited. The Judgment as a whole does not make reference to any evidence obtained from the Locus in quo. I do not find any merits in this ground of Appeal. There is evidence indeed that this land was registered. The Defendant/Appellant did not deny the fact that he annexed land by planting a hedge, his case is that he bought the piece of land he annexed. This did not call for the visiting the Locus in quo. The Appellant has not shown or substantiated the allegation that the Trial Magistrate visited the Locus in quo

in absence of the parties or after closure of proceedings. This ground of Appeal must fail.

### **FAILURE TO EVALUATE EVIDENCE**

There is no specific format or fomular for evaluating evidence. The criticism under the above chosen heading are that:-

- i. That he failed to find that the Plaintiff's husband had absolute right to sell the suit land and incapable of being stopped from doing so.
- ii. That he disregarded evidence of DW 2 and DW 3 that supported legality of sale of the disputed land.
- iii. That he erred to find that sale was illegal after finding that there was no fraud.
- iv. That he erred to hold that Defendant stops claiming ownership of land after holding there was no trespass.

*The above four aspects are the paraphrased criticism of the trial Magistrate Judgment that fall under the criticism that "The learned Trial Magistrate erred in Law and fact when he failed to evaluate the evidence on record thus leading to a wrong conclusion."*

The Plaintiff/Respondent was the wife of **LATE ALOSIOUS BEINEITIMA**. She had right and interest in the family property and with or without Letters of Administration she had legal claim over the estate of her husband. She was a beneficiary of the estate and she had a right to sue in that capacity and protect the estate's property.

In my view, whether at the time there was no statutory requirement to seek a wife's consent to sell family property did not protect the family property against the spouses squandering tendencies. PW 2 KEKIBIINA and ROSE (deceased's sister) testified that together with other family members presented the matter to the local authorities (LCs), a family meeting was held and resolved that

Beineitima shall not sell family land without the consent of his wife and children. The land as proved by a copy of the land Title is a family land which was registered at the time in the name of Beineitima's father who was the father of PW 3 and father-in-law to PW 1. It is irrelevant that Beineitima did not sign the family meeting minutes or resolutions. This could not give him the right to sell. He was stopped by his family members who had interest in the land and not by LCs as submitted for the Appellant. The Trial Magistrate had no basis to find that **BEINEITIMA** had absolute power to sell the suit land and I find the Appellants criticism of the Trial Magistrate on this ground baseless. **BEINEITIMA** for all legal purposes held the land in issue by virtue of being a successor to his father, there is evidence on the record that he obtained Letters of Administration to the estate of his father under Administration cause number 30 of 1996 already observed above. He became a mere Administrator on behalf of the beneficiaries of that estate.

The Trial Magistrate properly relied on the evidence of PW 2, PW 3, PW 4 and PW 5 to hold that the sale was illegal. I have considered the Trial Magistrates analysis that if the Late Beineitima was still alive he would be liable to be sued for refund of the proceeds from the illegal transaction. I appreciate the Trial Magistrate's reasoning that there was no trespass, the Defendant/Appellant entered the suit land by virtue of the illegal purchase of the land. In the circumstances I uphold the Trial Magistrate's Judgment cancelling the illegal sale and I have found no reasons to interfere with the trial courts orders, namely;

- (a) The Appellant is ordered to vacate the suit land.
- (b) No orders as to damages.
- (c) The Plaintiff/Respondent to refund the consideration paid for the cancelled sale.
- (d) Each party to meet its costs on appeal.

Dated at Kabale this 21<sup>st</sup> day of September, 2012.



J.W. KWESIGA

**JUDGE**

**Delivered in the Presence of:**

The Respondent in Court.

The Appellant absent.

The Advocates absent.

Mr. Joshua Musinguzi- Court-Clerk.